Trademark examining attorneys are charged with the protection of intellectual property and their work is widely respected and accepted by the domestic and international business communities. The proposed changes to the Performance Appraisal Program (PAP) threaten to undercut the quality of the examiners’ work thus harming the protection of intellectual property created by American and international businesses.

In short, the proposed PAP would:

- Create higher and more difficult goals in every element;
- Add requirements that are very difficult to meet during regular working hours forcing employees to work unpaid overtime or suffer the consequences of lower ratings;
- Significantly increase the production numbers for ratings, which may simply be out of reach for many excellent employees who have been consistently rated as “outstanding” for years;
- Create higher and more difficult requirements for the permissible number of minor practice and procedure errors and the percentage of required “contacts” with applicants/counsel, regardless of the applicant's preference;
- Disregard employees’ input and efforts to address the pendency concerns of the Office that showcase questionable management skills in communication and engagement; and
- Institute a bi-weekly workflow requirement and review that effectively micro-manages excellent attorneys without providing proper credit for the work, which is likely to result in less productive workflow rather than encouraging employees to determine how to do their work most efficiently.

The higher production requirements would place additional strain on the Office’s computer system that is already an impediment to completing work in a timely manner. Hundreds of millions of dollars have already been spent on the TMNG system which is unable to handle the current volume of work. The proposed PAP would add further stress to that system which is widely acknowledged to be unreliable. The Office’s stated goals could instead be achieved under the current PAP by making the systems that we use every day more efficient and reliable, namely the TEAS and FAST systems.

Very few of these proposed changes are based in analysis of data, statistics, or have been requested by our stakeholders. Raising the speed at which the already hard-working attorneys are required to provide complex legal analysis by over 20 percent while at the same time micromanaging attorneys by setting unattainable and arbitrary “quality” and “contact” goals at these speeds will needlessly harm morale and will only serve to deteriorate our customer service experience. These changes would greatly limit the discretion of examining attorneys to carry out USPTO’s statutory obligations in a manner they have found to be personally most efficient, and instead, needlessly adds bureaucratic requirements that are unsupported by data or the opinions of our customers.

It is unrealistic to raise the speed of work significantly, while also raising the already high metrics of quality and customer service and expect the desired result—years of experience indicate that the metric of production is inversely related to quality and customer service metrics. Worse, being forced to immediately increase employee speed to this degree could result in applications being registered to the detriment of current rights holders, and may serve to favor foreign applicants over domestic registrants if current application trends continue. Further, implementing such changes now would be reckless in advance of significant regulatory proposals that may result in the reversal of recent application filing trends.

The proposed PAP implies that examining attorneys should do better, when in fact many examining attorneys already are going above and beyond what is required of them with respect to time worked and the amount and quality of work, in order to meet the goals of the agency and their current PAP.

In short, implementation of this PAP will create more issues than it solves and the proposal must be rescinded.